

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TIMOTHY RYAN,

Plaintiff,

v.

Civil Action No. 5:09CV55
(STAMP)

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER
DECLINING TO AFFIRM AND ADOPT REPORT
AND RECOMMENDATION OF MAGISTRATE JUDGE

I. Procedural History

The plaintiff, Timothy Ryan, filed a complaint to review the decision of the Commissioner of Social Security to deny benefits. The plaintiff also filed an application to proceed in forma pauperis.¹ The case was referred to United States Magistrate Judge John S. Kaull for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B). The magistrate judge denied the plaintiff's request to proceed in forma pauperis because the plaintiff failed to use the proper form. Upon submitting his report, Magistrate Judge Kaull informed the parties that if they objected to any portion of his report and recommendation, they must file written objections within ten days after being served with a copy of the report. The plaintiff filed objections.

¹"In forma pauperis" describes the permission granted to a poor person to proceed without liability for court fees or costs. Black's Law Dictionary 779 (7th ed. 1999).

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 458 F. Supp. 825 (E.D. Cal. 1979). Because the plaintiff has filed objections, this Court will undertake a de novo review as to those portions of the report and recommendation to which objections were made.

III. Discussion

To proceed in forma pauperis, a plaintiff need not demonstrate absolute destitution. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948). Rather, under Adkins, a plaintiff need only demonstrate that the payment of court costs imposes a substantial burden. Id. The magistrate judge found that the plaintiff has not submitted the proper IFP application form with information concerning the income and assets of the plaintiff's spouse. A review of the record indicates that the plaintiff has now submitted a complete IFP application form and has communicated with this Court in his objections to explain his reasons for noncompliance. After reviewing the record de novo, this Court finds that the plaintiff has shown good cause to allow the

plaintiff to proceed in forma pauperis and declines to follow the magistrate judge's recommendation.

IV. Conclusion

Based upon a de novo review, this Court finds that it should decline to adopt the report and recommendation of the magistrate judge based upon circumstances presented after the report and recommendation. Accordingly, for the reasons set forth above, the plaintiff's motion to proceed in forma pauperis is GRANTED.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: October 1, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE